

(2016) 04 BOM CK 0105
In the Bombay High Court
Case No : Writ Petition No. 10044 of 2015

The Central Board of Trustees	Vs	APPELLANT
M/s. Hotel Leelaventure Ltd.		RESPONDENT

Date of Decision : 28-04-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B, 7Q

Citation : (2016) 3 ALLMR 875 : (2016) 2 CLR 889 : (2016) 150 FLR 160 :
(2016) LabLR 1017 : (2016) 4 MhLJ 623

Hon'ble Judges : S.C. Gupte, J.

Bench : Single Bench

Advocate : Suresh Kumar, Advocate, for the Appellant; S.C. Naidu a/w. T.R. Yadav a/w. Aniket Poojari i/b. C.R. Naidu & Co., Advocates, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Gupte, J. (Oral) - Heard learned counsel for the parties. The subject matter of challenge in this petition is an order passed by the Provident Fund Appellate Tribunal. The controversy before the Appellate Tribunal consisted of calculation of damages that could be levied on the Respondent-employer for the delay in payment of provident fund dues. The dues included employees' contributions which were deducted by the Respondent-employer but not deposited with the provident fund authorities. The impugned order directed payment of damages under Section 14-B of the Employees Provident Funds and Miscellaneous Provisions Act 1952 ("the Act") and simple interest, addition to these damages under section 7-Q of the act, calculated on the basis of the payment by the Respondent-employer reflected in the bank certificate.

2. The basis of the challenge by the provident fund organisation is that Section 14-B of the Act empowers the Central Provident Fund Commissioner to recover from the employer an amount not exceeding the amount of arrears by way of penalty, if a default is made in payment of any contribution by the employer. It is

submitted, in the first place, that there was no reason for the Appellate Tribunal to restrict the quantum of damages to 25%. Secondly, it is submitted that the order of the Regional Provident Fund Commissioner, which was varied in the appeal by the Appellate Tribunal, correctly required the calculation of the damages under Section 14-B payable upto 25/09/2008 at the rate of upto 37% in accordance of paragraph 32-A of the Employees Provident Fund Scheme, 1952, which was applicable as on the date of 25/09/2008 and thereafter at the rate of upto 25% under amended paragraph 32-A of the scheme introduced with effect from 26/09/2008.

3. Insofar as damages payable under Section 14-B of the Act are concerned, there is an authority in the Provident Fund Commissioner to recover a maximum amount not exceeding the amount of arrears as and by way of penalty. This is an outer limit of any penalty that may be charged. The provision of penalty is further circumscribed by the expression "as may be specified in the scheme", appearing in Section 14-B. The net result of the two limitations, namely, the upper limit of 100% of arrears and the specification of the scheme, is that the amount of damages could only be upto 100% of the amount of arrears or the damages specified in the scheme, whichever is lower. The scheme as it operates today provides for the maximum rate of damages as 25% of the arrears per annum. Thus, the damages could not exceed 25% of the arrears per annum. The judgment of the Division Bench of Delhi High Court in the case of Systems and Stamping and Anr. v. Employees Provident Fund, Appellate Tribunal and Ors., 2008-II-LLJ-939 accordingly, awarded damages at the flat rate of 25% per annum. This judgment was affirmed by the Supreme Court when the matter was carried before it in a Special Leave Petition. In another case, Delhi High Court in a Full Bench decision in Roma Henny Security Services Pvt. Ltd. v. Central Board Trustees 2012 (135) FLR 799 once again awarded a flat rate of 25% based on the provident fund scheme as amended by the new paragraph 32-A.

4. The next contention urged by the Petitioner's counsel is that damages ought to be calculated upto 25/09/2008 under paragraph 32-A of the scheme as it then subsisted (providing for damages @ 37%). With effect from 26/09/2008 a new paragraph 32-A was introduced in the scheme (providing for the rate of 25%). Accordingly, it is submitted that damages should be upto 37% of arrears per annum upto 25/09/2008 and thereafter at the rate of 25% per annum, in both cases in addition to interest at the rate of 12% per annum under Section 7-Q of the Act. Even this contention was considered by Delhi High Court in the two cases noted above. The Division Bench of Delhi High Court in the case of Systems and Stamping (Supra) held that interest was to be calculated even for the period prior to 25/09/2008 at the flat rate of 25% per annum together with simple interest at the rate of 12% per annum under section 7-Q (after 01/07/1997) and not damages at the rate of 37% per annum together with interest at the rate of 12%. The position was further explained by Delhi High Court in its Full Bench judgment in the case of Roma Henny Security Services Pvt. Ltd. (Supra). The Court explained the position thus:

"11. It is not in dispute that if the judgment of M/s. System and Stamping (supra) is to be followed, the case is covered in favour of the petitioner. However, we find substance in the submission of learned Counsel for the respondent that in the said judgment the Division Bench entirely rest upon the Office Memorandum dated 29.05.1990 on the basis of which the Bench came to the conclusion that interest element chargeable under section 7-Q of the Act was included in the table prescribing damages payable under section 14-B of the Act. As we will demonstrate hereinafter, there were various other subsequent Circulars which were not taken into account. In the first instance, it needs to be pointed out that the Office memorandum referred to by the Division Bench was dated 29.05.1990. It was issued at the time when section 7-Q was not made effective. Pertinently, this provision was introduced in the Act in the year 1988 but was made effective only from 01.07.1997. Since the provision was not in force as on 29.05.1990, it appears that by that mechanism which was applied administratively was to include the component of interest while imposing the damages under section 14-B of the Act. However, the position changed after section 7-Q of the Act was in force w.e.f. 01.07.1997. The interest on delayed contribution of provident fund became payable statutorily. While this was so, the aforesaid table continued to operate which has now been modified and replaced by the another table made effective from 26.09.2008 and the rates of damages as per the revised table are as under:-

12. It is clear from the above that w.e.f. 26.09.2008 the damages under section 14-B of the Act are charged on the aforesaid basis which would show, for example if the period of default is less than two months, the damages payable are 5%. However, the table which was governing upto this date and is noted in the judgment of M/s. System and Stamping (supra), the damages for the period of default of less than two months were 17%. Same is the position in respect of other periods of default when the two tables are kept in juxtaposition it would clearly revealed that the damages are now reduced by 12% at every stage meaning thereby component of interest under section 7-Q is now removed. The comparison of the aforesaid two would show that upto 26.09.2008 the earlier table continue to govern which included the element of interest under section 7-Q of the Act. From 26.09.2008 onwards, however the two are segregated. This would clearly bolster the stand of the petitioner that if the earlier table is applied which was so done, interest payable under section 7-Q of the Act was already included."

5. I am in respectful agreement with the view expressed, and reasons indicated, by Delhi High Court in the above cases.

6. In that view of the matter, there is no merit in either of the challenges before this Court. The order of the Appellate Tribunal requiring that quantum of damages to be restricted to 25% of arrears per annum with simple interest under Section 7-Q of the Act requantified in accordance with the bank certificate submitted by the Respondent-employer, cannot be found fault with. The petition

is, accordingly, dismissed. No order as to costs.